

**Tentative Rulings and Resolution Review Hearings  
September 21, 2015  
Department 3**

**NOTE:** This Court does not follow the procedures described in Rules of Court, Rule 3.1308(a). Tentative rulings appear on the calendar outside the court department on the date of the hearing, pursuant to California Rule of Court, Rule 3.1308(b)(1). As a courtesy to counsel, the court also posts tentative rulings no less than 12 hours in advance of the time set for hearing. The rulings are posted on the court's website ([www.shasta.courts.ca.gov](http://www.shasta.courts.ca.gov)) and are available by clicking on the "Tentative Rulings" link. A party is not required to give notice to the Court or other parties of intent to appear to present argument.

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**8:30 a.m.**

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**COX VS. LEE, ET AL  
Case Number: 14CV0779**

**Tentative Ruling on Order to Show Cause re Sanctions:** An Order to Show Cause re Sanctions issued to Plaintiff on August 17, 2015 for failure to appear at the August 10, 2015 review hearing. A review of the Court's file demonstrates uncertainty as to whether Plaintiff received notice of either the August 10, 2015 review hearing or today's hearing on the Order to Show Cause. There is no proof of service on Plaintiff of the July 6, 2015 order relieving Attorney Hixon as counsel which set a status review hearing on August 10, 2015. Furthermore, the Order to Show Cause re Sanctions issued on August 17, 2015 was mailed to "General Delivery, Shasta Lake City" as opposed to Plaintiff's last known address as supplied under oath by Attorney Hixon at a July 6, 2015 hearing.

The Order to Show Cause re Monetary Sanctions is VACATED. Unless Plaintiff appears at the review hearing today at 11:00 a.m., the Court sets the matter for a review hearing on **Monday, October 19, 2015 at 11:00 a.m. in Department 3**. Plaintiff is required to appear to inform the Court of the status of service on Defendants. Plaintiff's failure to appear at the hearing may result in issuance of an Order to Show Cause re Sanctions of \$250 for failure to appear and failure to timely serve Defendants.

**The clerk is directed to mail a copy of today's minutes to Plaintiff at the following addresses, along with a copy of the July 6, 2015 Order Granting Attorney's Motion to Be Relieved as Counsel: 1) 4085 Whiting Way, Shasta Lake City, CA 96019; and 2) 4561 Red Bluff Ave., Shasta Lake, CA 96019. The clerk is also directed to enter the Whiting Way address as Plaintiff's current address within JALAN.**

**FEDERAL HOME LOAN MRTG CO VS. SELVEY  
Case Number: 181261**

**Tentative Ruling on Motion of Summary Judgment:** No tentative ruling.

**Tentative Ruling on Motion to Dismiss:** No tentative ruling.

**Tentative Ruling on Motion to Continue the Trial Date:** No tentative ruling.

**HARDING VS. ANTLERS RESORT & MARINA, INC**

**Case Number: 181204**

This matter is on for a review hearing regarding trial re-setting, the previous trial date having been vacated by the Court's order dated August 20, 2015. As a preliminary matter the Court notes that review hearings are typically heard at 11:00 a.m. but the matter appears to have been mistakenly placed on the 8:30 calendar. The Court designates this matter as a Plan II case and intends on setting the matter for trial no later than May 24, 2016. The Court notes that only the Plaintiff has posted jury fees. The parties are ordered to appear to provide the Court with available trial dates, a time estimate and to discuss whether this matter will be a jury or bench trial.

**IN RE BARBA**

**Case Number: 182803**

**Ruling on Petition for Change of Name and Gender:** Petitioner seeks a decree from the Court changing her minor daughter's name and gender. If no objection has been timely filed to a petition for change of name and gender, then the Court is required to grant the petition without a hearing. Code of Civ. Proc. § 1278(a)(2). An objection is timely filed if it is submitted at least two court days before the day set for hearing. *Ibid.* No objections have been filed.

The Petition is GRANTED without hearing. The Decree will be executed and made available to the Petitioner. The clerk is instructed to vacate all future dates and close the file.

**IN RE MATHEWS**

**Case Number: 182864**

**Tentative Ruling on Petition for Change of Name:** Petitioner has provided proper proof of publication. No written objections have been filed. The paperwork is in order. The Petition is GRANTED. Future dates may be VACATED and the file may be closed upon the processing of the decree.

**IN RE MOUTINHO**

**Case Number: 182931**

**Tentative Ruling on Petition for Change of Name:** The Court requires proof of publication before the petition may be granted.

**PRYSOK VS. EDWARDS, ET AL**

**Case Number: 181328**

**Tentative Ruling on Order to Show Cause Re: Sanctions:** An Order to Show Cause Re: Sanctions issued on August 17, 2015 to Plaintiff for his failure to appear at the mandatory settlement conference which took place on August 10, 2015. No response has been received from Plaintiff.

Sanctions are hereby imposed in the sum of \$250 against Plaintiff. Said sum to be paid to the Court no later than 30 days from the date of issuance of the order. **The clerk is directed to prepare a separate Order for Sanctions.** The review hearing set for today at 11:00 a.m. is confirmed.

**REITAN VS. BOUTIQUE AIR, INC.**

**Case Number: 182918**

**Tentative Ruling on Order to Show Cause Re: Striking Notice of Appeal:** The Labor Commission issued an order against Appellant, Boutique Air, Inc. and in favor of Respondent, Brock Reitan on June 30, 2015. On

July 15, 2015, Henri Revel on behalf of Appellant, Boutique Air, Inc. filed a “Notice of Appeal.” An Order to Show Cause Re Striking Notice of Appeal was issued on August 7, 2015 to Defendant, Boutique Air, Inc. on the grounds the Notice of Appeal was filed but a non-attorney. It is well established law that a corporation cannot appear in pro per and must be represented by an attorney. A corporation is not a natural person and cannot appear in prop pers. *Merco Construction Engineers Inc. v. Municipal Court* (1978) 21 Cal. 3d 724. “A corporation cannot represent itself in court, either in propria persona or through an officer or agent who is not an attorney.” *Vann v. Shilleh* (1975) 54 Cal.App.3d 192, 199. The above authority was the basis for the issuance of the Order to Show Cause.

Upon further review by the Court, an exception to the above authority was located which permits a non-attorney to file the initial Notice of Appeal. See *Rogers v. Municipal Court* (1988) 197 Cal.App.3d 1314, 1318-19. Based on the foregoing, the Order to Show Cause is vacated. That being said, Appellant as a corporation must still be represented by counsel in all other matter during the pendency of this litigation including but not limited to trial.

The Court sets this matter for **Monday, November 23, 2015 at 11:00 a.m. in Department 3** for status of service of the Notice of Appeal. No appearance is necessary on today’s calendar.

### **RHODES VS. WAYDA**

**Case Number: 180836**

**Tentative Ruling on Order to Show Cause re Dismissal:** On August 13, 2015, an Order to Show Cause Re: Dismissal was issued against Plaintiff, James Rhodes and counsel pursuant to Government Code § 68608(b). The present Petition for Writ of Mandate was filed on September 26, 2014 but no action has been taken by Plaintiff or his counsel to prosecute this action. The Defendant has never been served, the administrative record has not been filed, the writ was never been set for a hearing and Plaintiff failed to appear for the mandatory settlement conference. For these reasons, the Court found that the Plaintiff has abandoned the case which resulted in the issuance of the present Order to Show Cause. No response to the Order to Show Cause re Dismissal having been filed, Plaintiff’s action is DISMISSED without prejudice. **The clerk shall prepare a separate Order of Dismissal.**

### **SCHULTZ VS. PLANNED PARENTHOOD OF NO CAL**

**Case Number: 181125**

**Tentative Ruling on Motion for Leave to File Amended Answer to Complaint:** Defendant, Planned Parenthood Northern California requests leave to file a First Amended Answer to assert failure to exhaust available administrative remedies as an affirmative defense against Plaintiff’s sole cause of action for retaliation.

Code of Civil Procedure section 473(a)(1) permits a Court, in its discretion, to allow amendments to pleadings in the furtherance of justice. This discretion “must be exercised liberally at all stages of the proceeding by permitting those amendments which will facilitate the interests of justice and resolve all disputed issues.” *Edwards v. Superior Court* (2001) 93 Cal.App.4<sup>th</sup> 172, 180. The liberality rests on the fundamental policy that cases should be decided on their merits. *Hirsa v. Superior Court* (1981) 118 Cal.App.3d 486, 288-89.

Based on the well-established policy of liberality in allowing amendments to pleadings, Defendant’s motion is GRANTED without prejudice to Plaintiff to file a dispositive motion challenging the validity or application of the new affirmative defense. The Court notes that a proposed order was lodged with the Court but orders Defendant to provide a new proposed order that comports to this Court’s final ruling. The Court notes that the copy of the Amended Answer included with the motion papers is attached as an exhibit to counsel’s declaration. The Court orders Defendant’s counsel to file a separate free-form copy of the Amended Answer.

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**11:00 a.m.**

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**CITY OF ANDERSON VS. DAMIAN, ET AL**  
**Case Number: 181280**

This matter is on for a review hearing regarding status of receivership. On August 24, 2015, the Court granted Plaintiff's motion for appointment of a receiver appointing Mark Adams as the receiver. The Court's order required the Mr. Adams to immediately execute and file a Receiver's oath and to post a bond in the amount of \$10,000.00. The Receiver's oath has not been filed nor has a bond been posted. An appearance is required by counsel for the Plaintiff to provide the Court with a status of the oath and bond.

**COX VS. LEE, ET AL**  
**Case Number: 14CV779**

This matter is on for a review hearing regarding status of the case. The Court notes that there is no proof of service on the Defendants in the file. If Plaintiff appears at today's hearing she is required to provide the Court with a status of the service on the Defendants. As noted on the law and motion calendar, if Plaintiff does not appear this matter will be continued to **Monday, October 19, 2015 at 11:00 a.m. in Department 3.**

**LILLY VS. SIMONSON**  
**Case Number: 181394**

This matter is on for a review hearing regarding status of criminal proceedings. The purpose of the hearing is to determine whether or not the stay on discovery in this action should be lifted. The Court has reviewed Defendant's Status Report filed September 9, 2015 and finds the stay is not ready to be lifted, as Defendant's criminal trial has been continued to December 15, 2015. The stay of discovery in this matter shall remain in place until completion of the trial on the criminal matter brought against the Defendant. All discovery cut off dates and timeframes for dispositive motions will be governed new trial date which has yet to be set. In light of the stay, this matter is continued to **Monday, January 25, 2016 at 11:00 a.m. in Department 3.** The Court orders that the parties file Status Reports addressing the status of the criminal matter at least five (5) court days prior to the next hearing. No appearance is necessary on today's calendar.

**MOSTELLER VS. TOYOTA MOTOR CORP, INC., ET**  
**Case Number: 179472**

This matter is on for a review hearing regarding status of the case. At the previous hearing on August 10, 2015, Plaintiff's counsel, Mr. McCabe appeared and informed the Court that he intended on filing a motion to be relieved as counsel. No substitution of attorney or motion to be relieved has been filed. The Court notes that this matter was previously the subject of an Order to Show Cause Re: Dismissal for failure to prosecute the case. The complaint was filed on March 14, 2015 but was never served. Plaintiff's counsel is ordered to appear to provide the Court with a status update on this case; specifically, to address when the motion to be relieved will be filed and when the complaint will be served.

**PINCKNEY VS. HOLDERMAN**  
**Case Number: 180916**

This matter is on for a review hearing regarding trial re-setting, the previous trial date having been vacated by the Court's order dated September 9, 2015 due to courtroom unavailability. The Court designates this matter as

a Plan II case and intends on setting a two day court trial no later than April 14, 2016. The parties are ordered to appear to provide the Court with available trial dates.

**PRYSOK VS. EDWARDS, ET AL**

**Case Number: 181328**

This matter is on for a review hearing regarding trial-resetting, the previous trial date having been vacated by the Court's order dated August 10, 2015. The Court designates this matter as a Plan II case and intends on setting a trial date no later than June 15, 2016. The parties are ordered to appear to provide the Court with available trial dates, to discuss whether this will be a jury or bench trial and to provide a time estimate.

**WARNER, ET AL VS. CAL-WESTERN, ET AL**

**Case Number: 180526**

This matter is on for a review hearing regarding status of settlement and trial re-setting. A Notice of Settlement of Entire Case was filed on August 21, 2015 which indicates that the matter will be dismissed within 45 days of settlement. In light of the foregoing, this matter is continued to **Tuesday, October 13, 2015 at 11:00 a.m. in Department 3** for status of settlement/dismissal. If a dismissal has been filed prior to the next hearing date no appearance will be necessary. No appearance is necessary on today's calendar.